

IN THE COURT OF APPEALS OF IOWA

No. 7-631 / 07-1192
Filed September 6, 2007

**IN THE INTEREST OF K.B.O., K.M.O., S.N.O., B.S.O., and S.P.O.
Minor Children,**

**G.T.O. and V.O., Parents,
Appellants.**

Appeal from the Iowa District Court for Madison County, Kevin A. Parker,
District Associate Judge.

The parents appeal the adjudication and disposition orders in child in need
of assistance proceedings. **AFFIRMED.**

Victoria Meade, West Des Moines, for appellant parents.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, and Julie A. Forsyth, County Attorney, for appellee State.

Kimberly Haddox, Indianola, for minor children.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

The parents appeal the adjudication and disposition orders in child in need of assistance proceedings. We affirm.

I. Background Facts and Proceedings

K.B.O., K.M.O., S.N.O., B.S.O., and S.P.O., all of whom have special needs, are the adopted children of the parents. The children live with the parents and with an adult adoptive brother who has special needs. They also have another adult adoptive brother who no longer resides with them, along with three other adult adoptive siblings.

On January 26, 2007, the Iowa Department of Human Services (DHS) received a report that K.M.O. and S.N.O. had been sexually abused by their father and adult adoptive brother who lives with them. On January 30, 2007, the parents gave their consent to temporarily remove the children from their home and place them in foster care. On February 1, 2007, the children were interviewed concerning the sexual abuse allegations. On February 8, 2007, the parents withdrew their consent and applied for a temporary removal hearing. On February 9, 2007, the State filed its child in need of assistance (CINA) petition pursuant to Iowa Code sections 232.2(6)(c)(2) (failure to supervise) and (d) (sexual abuse) (2007). On February 23, 2007, the DHS issued a founded report of sexual abuse in the third degree against the father regarding K.M.O.; sexual abuse by omission in the second degree against the parents regarding K.M.O. and K.B.O.; and denial of critical care against the parents regarding S.N.O., B.S.O., and S.P.O. On March 28, 2007, the State filed its motion to amend its

petition to add another ground under section 232.2(6)(b) (physical abuse or neglect), which the parents resisted.

An eight-day evidentiary hearing on the parents' application and State's petition began on March 12, 2007, and ended on April 16, 2007. On May 31, 2007, the juvenile court entered its findings of fact, conclusions of law, and order. The juvenile court granted the State's motion to amend and adjudicated the children CINA under sections 232.2(6)(c)(2), (b), and (d). The juvenile court found K.M.O. had been sexually abused by her adult adoptive brothers and father and concluded K.M.O. was credible because she had advised numerous persons of the sexual abuse and had been consistent in her description of the incidents that had occurred. The juvenile court also found K.B.O., S.N.O., and S.P.O. had been sexually abused by the adult adoptive brother who lives with them. In addition, the juvenile court found that when this brother was a child he had been sexually abused by the adult adoptive brother who no longer resides with the family. According to the juvenile court, the parents failed to properly protect these children from sexual abuse, even though they were aware of some of the sexual abuse. Moreover, even though she has not been sexually abused, the juvenile court found B.S.O.'s safety could not be assured due to her siblings being sexually abused and her parents' failure to properly protect them. Finally, the juvenile court found the parents' discipline methods amounted to physical abuse, i.e., the mother would hug or place the children on the floor and lay on them until they felt they were being smothered, and the parents would restrict them to their rooms and not allow them to leave except to go to school or use the restroom for a period of four to thirty days at a time. The juvenile court ordered

the children to be placed with the DHS for foster care placement pending disposition as they could not be returned to their parents' home.

On June 28, 2007, the juvenile court held a disposition hearing and issued its disposition order, confirming the children's CINA adjudication status and ordering them to be placed with the DHS for shelter care (K.M.O.) and foster care placement as they could not be returned to their parents' home.

On appeal, the parents challenge the sufficiency of the evidence in support of the juvenile court's CINA adjudication, including the juvenile court's credibility determinations. The parents essentially argue that the children lied about the sexual and physical abuse incidents.

II. Standard of Review

Our review in child in need of assistance proceedings is de novo. Iowa R. App. P. 6.4; *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001) (citing *In re H.G.*, 601 N.W.2d 84, 85 (Iowa 1999); *In re E.H. III*, 578 N.W.2d 243, 248 (Iowa 1998); *In re N.C.*, 551 N.W.2d 872, 872 (Iowa 1996)). We review “both the facts and the law, and we adjudicate the rights anew.” *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994) (quoting *In re T.A.L.*, 505 N.W.2d 480, 482 (Iowa 1993)). We give weight to the juvenile court's findings of fact, especially its credibility determinations; however, we are not bound by them. Iowa R. App. P. 6.14(6)(g); *In re L.L.*, 459 N.W.2d 489, 493 (Iowa 1990) (citing *In re A.M.S.*, 419 N.W.2d 723, 726 (Iowa 1988)). The State has the burden of proving the grounds by clear and convincing evidence. Iowa Code § 232.96(2). “Clear and convincing evidence means no serious or substantial doubt exists about the correctness of the conclusions drawn from the evidence.” *In re S.J.M.*, 539 N.W.2d 496, 500 (Iowa Ct. App.

1995) (citing *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App. 1983)). Finally, “[o]ur overriding consideration is the best interest of the children.” *In re E.H. III*, 578 N.W.2d at 248 (citing Iowa Code § 232.1).

III. Sufficiency of Evidence

Under Iowa Code section 232.2(6)(d), a child may be adjudicated CINA if the child “has been, or is imminently likely to be, sexually abused¹ by the child’s parent, guardian, custodian or other member of the household in which the child resides.” Iowa Code § 232.2(6)(d). As stated above, the juvenile court found that K.M.O. had been sexually abused by her adult adoptive brothers and father and concluded that K.M.O. was credible because she had advised numerous persons of the sexual abuse and had been consistent in her description of the incidents that had occurred. The juvenile court also found that K.B.O., S.N.O., and S.P.O. had been sexually abused by the adult adoptive brother who lives with them. The record contains abundant evidence supporting these findings, and we adopt them as our own. Like the trial court, we conclude clear and convincing evidence supports the adjudication of these children pursuant to section 232.2(6)(d).

Under section 232.2(6)(c)(2), a child may be adjudicated CINA if the child “has suffered or is imminently likely to suffer harmful effects as a result of . . . [t]he failure of the child’s parent, guardian, custodian, or other member of the household in which the child resides to exercise a reasonable degree of care in

¹ “Sexual abuse” means “the commission of a sex offense as defined by the penal law.” Iowa Code § 232.2(49); see also *id.* § 709.1(3) (stating that “[a]ny sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances: . . . [s]uch other person is a child”).

supervising the child.” *Id.* § 232.6(c)(2). As stated above, the juvenile court found the parents failed to properly protect K.M.O., K.B.O., S.N.O., and S.P.O. from sexual abuse, even though they were aware of some of the sexual abuse. Moreover, even though she has not been sexually abused, the juvenile court found that B.S.O.’s safety could not be assured due to her siblings being sexually abused and her parents’ failure to properly protect them. Our supreme court has stated:

[a]lthough every CINA adjudication addresses a unique situation, facts in prior cases suggest that perpetrators of sexual abuse often abuse multiple children in the family without regard to the sex of the child. *See, e.g., State v. Farnum*, 397 N.W.2d 744, 745 (Iowa 1986) (defendant convicted of sexually abusing boy and girl living in home along with neighbor girl). Prior decisions likewise reflect the common sense notion that, ordinarily, all siblings are at risk when one child has been sexually abused. *See, e.g., In re E.B.L.*, 501 N.W.2d 547, 548 (Iowa 1993) (father allegedly sexually abused oldest daughter and all six children adjudicated CINA); *In re A.B.*, 492 N.W.2d 446, 447 (Iowa Ct. App. 1992) (court ordered CINA petition filed on all children after allegations of sexual and physical abuse of one child).

In re D.D., 653 N.W.2d 359, 362 (Iowa 2002). Like the trial court, we conclude clear and convincing evidence supports adjudication of these children pursuant to section 232.2(6)(c)(2).

Finally, under section 232.2(6)(b), a child may be adjudicated CINA if the child’s “parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected² the child, or is imminently likely to abuse or neglect the child.” Iowa Code § 232.2(6)(b). As stated above, the juvenile court found that the parents’ discipline methods

² “Physical abuse or neglect” means “any nonaccidental physical injury suffered by a child as a result of the acts or omissions of the child’s parent, guardian or custodian or other person legally responsible for the child.” Iowa Code § 232.2(42).

amounted to physical abuse, i.e., the mother would hug or place the children on the floor and lay on them until they felt they were being smothered, and the parents would restrict them to their rooms and not allow them to leave except to go to school or use the restroom for a period of four to thirty days at a time. The record contains abundant evidence supporting these findings, and we adopt them as our own. Like the trial court, we conclude clear and convincing evidence supports the adjudication of these children pursuant to section 232.2(6)(b).

AFFIRMED.